IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 8413 OF 2004.

Smt. Geeta Pandurang Sardal & Anr..... ..Petitioners.

V/s

Shri Madhav Dattatray Vaidya & Ors..... ... Respondents.

Mr.M.S. Patankar for the petitioners.

Mr.M.D. Angal for respondent No.1.

**CORAM: R.M.S. KHANDEPARKAR, J.**

13-12-2004

PC:

Heard learned advocates for parties.

The petitioners challenge the decree of eviction passed with concurrent finding against the petitioner. It is sought to be challenged on the ground that both the Courts failed to consider that the respondent is not fulfledged owner of the premises in question and inspite of the fact that there was specific denial regarding claim of ownership and the evidence produced to the extent that the respondent is the owner of 1/3rd undivided share in the suit property and the respondent had not proceeded to exercise his right in terms of section 44 of the Transfer of Property Act, the eviction proceedings were not maintainable against the petitioners who are tenants in respect of

entire premises under the lease created by the owners of the property. Undisputedly the material on record disclose that the respondent is the owner of 1/3rd share of the property. Section 44 of the Transfer of Property Act provides that where one of the two or more coowners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires subject to such share or interest, and so far as is necessary to give, effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting at the date of the transfer, the share or interest so transferred. It further provides that where transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house. Undoubtedly second part of section 44 prescribes certain embargo while seeking joint possession of property by a stranger who acquires share in the property belonging to joint family, in relation to dwelling house of the family. Undisputedly the premises in question are not dwelling house of the joint family. The first part of section 44 of the Transfer of Property Act clearly empowers a person acquiring coownership right to exercise all his coownership rights in relation to the property wherein he acquires coownership, that being so and considering the fact that the respondent had acquired 1/3rd share in the property he had acquired coownership right in the property and considering the provisions of section 44 nothing prohibited the respondent from seeking eviction of the tenant in occupation of the premises situated in the property which is owned by the respondent along with others. In this view of the matter, no fault can be found with the impugned order passed by the Court rejecting the

contention sought to be raised by the petitioner based on the provisions of law comprising section 44 of the Transfer of Property Act. The findings arrived at being clearly borne out from record and there being no substance in the contention sought to be raised by the petitioner and as the impugned decree is not challenged on any other ground, no interference is called for in the impugned order in exercise of powers in writ jurisdiction under Article 227 of the Constitution. Therefore the writ petition is dismissed.